

JAN 22 2003

LUTHER D. THOMAS, Clerk  
By: [Signature]  
Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

DONALD C. WAGNER, et al.,

Plaintiffs,

v.

AT&T CORPORATION and  
AT&T EMPLOYEES BENEFIT  
COMMITTEE,

Defendants.

CIVIL ACTION NO.  
1:01-CV-2448-RWS**ORDER**

This case is before the Court on the Court's *sua sponte* consideration of the appropriateness of joinder of Plaintiffs in this action. After reviewing the record and considering the arguments of the parties, the Court enters the following Order.

**Discussion**

Parties may join their claims in one action if two requirements are met. Fed. R. Civ. P. 20(a). First, they must seek relief on the basis of the same transaction, occurrence, or series of transactions. Second, there should be a common question of law or fact. Joinder is proper only when both

requirements are established. Magnavox Co. v. APF Electronics, Inc., 496 F. Supp. 29, 34 (N.D. Ill. 1980). In the present case, the parties are not properly joined because the alleged injuries resulted from separate but similar transactions rather than from the same transaction or series of transactions.

In accordance with Federal Rule of Civil Procedure 21, a suit may not be dismissed for misjoinder. Nonetheless, the district court has discretion to drop parties without prejudice and allow them leave to file their own suits. Fed. R. Civ. P. 21; Aaberg v. Acands, Inc., 152 F.R.D. 498, 501 (D. Md. 1994); The Court also has broad discretion to sever claims and allow them to proceed separately, even in the absence of misjoinder. U.S. v. O'Neil, 709 F.2d 361, 369 (5th Cir. 1983); see also Henderson v. AT&T Corp., 918 F. Supp. 1059, 1062 (S.D. Tex. 1996) (stating that use of Rule 21 for severance is not limited to cases of misjoinder and concluding that severance of claims was necessary to avoid prejudice to defendant). A severance under Rule 21 results in separate, independent actions. O'Neil, 709 F.2d at 368.

Because the Court finds that the Plaintiffs in this action are misjoined, the Court **ORDERS** that Plaintiffs' claims be severed. Each Plaintiff wishing to proceed must file a Complaint and pay the required filing fee within forty-


five (45) days of the entry of this Order. For the purposes of any applicable statute of limitations, the Complaint shall be deemed an Amended Complaint amending the original Complaint filed September 13, 2001. The Amended Complaints may be similar to the Complaint previously filed under the civil action number noted in the style of this case, but the caption should include only the name of the individual Plaintiff wishing to proceed separately with his case and paying the appropriate filing fee. In addition to filing the Amended Complaint with the Court, the individual Plaintiffs shall serve a copy of the Amended Complaint on Defendant by sending a copy by first class mail to the following address:

John T. Murray, Esq.  
Seyfarth Shaw  
1545 Peachtree Street, N.E.  
One Peachtree Pointe, Suite 700  
Atlanta, GA 30309-2401.

Civil action number 1:01-CV-2448-RWS will be assigned to Plaintiff Robert Arnett. Plaintiff Arnett, while not required to pay another filing fee, will be expected to file an Amended Complaint outlining his individual claim and captioned as Robert Arnett v. AT&T Corporation, et al. Any other Plaintiff wishing to proceed individually will be assigned a new civil action

number, and each of those cases shall be assigned to the undersigned. Any Plaintiff who fails to file an Amended Complaint within the time specified shall have his claims dismissed without prejudice. Defendant shall answer each Amended Complaint within seventy-five (75) days of the entry of this Order or within thirty (30) days of service of each Amended Complaint, whichever is later.

**SO ORDERED** this 22<sup>nd</sup> day of January, 2003.

  
RICHARD W. STORY  
UNITED STATES DISTRICT JUDGE